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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,046	06/24/2003	James H. Wright	WRIGP001US	1045
27949 7590 07/09/2008 LAW OFFICE OF JAY R. YABLON 910 NORTHUMBERLAND DRIVE SCHENECTADY, NY 12309-2814				
EXAMINER				
JOYNER, KEVIN				
ART UNIT		PAPER NUMBER		
1797				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/604,046

Applicant(s)

WRIGHT, JAMES H.

Examiner

KEVIN C. JOYNER

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-60 is/are pending in the application.
- 4a) Of the above claim(s) 12-20, 22 and 30-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-16, 21 and 23-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

FINAL ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, 12-16, 21, 23-25, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stonehouse (U.S. Patent No. Des. 375,870) in view of Daenen (U.S. Patent No. Des. 248,075).

3. Stonehouse discloses an anti-splash, anti-spill fluid holding apparatus, comprising:

an inner side surface comprising an inner mid section diameter thereof continuing inwardly to an inner upper section diameter thereof which is smaller than said inner mid section diameter, from more than side cross-sections;

an outer side surface comprising an outer mid section diameter thereof continuing to an outer lower section diameter thereof;

said outer side surface further comprising an outer diameter thereof which, between said outer lower section diameter and an outer upper section diameter thereof substantially never increases when moving from any lower circumference thereof to any higher circumference thereof, from more than two side cross-sections;

an open top circumscribed by said inner upper section diameter;

an inward angle comprising a less than 90 degree angle tangential to any point along said inner side surface from said inner mid section diameter to said inner upper section diameter, from more than two side cross-sections, wherein said inward angle is greater than zero degrees at said open top (For a more detailed explanation, please see the pertinent prior art section of this Office Action);

a base circumscribed by said outer lower section diameter; and

said inner side surface, said outer side surface, said inward angle, said open top which is smaller than said inner mid section diameter, and said base circumscribed by said outer lower section diameter which is larger than said outer mid section diameter, all comprising a single, unitary article of fabrication as shown in Figures 1 and 2. Stonehouse does not appear to disclose that the outer side surface comprising the outer mid section diameter thereof continuing to the outer lower section diameter thereof is larger than said outer mid section diameter, from more than two side cross sections or that the article of fabrication is a rigid material substantially similar to that of a shot glass. However, it is conventionally well known in the art of drinking vessels to comprise an outer lower section diameter that is larger than the outer mid section diameter as well as comprising the article of fabrication from a rigid material similar to that of a shot glass.

Daenen discloses an anti-splash, anti-spill fluid holding apparatus comprising:

an inner side surface comprising an inner mid section diameter thereof continuing inwardly to an inner upper section diameter thereof which is smaller than said inner mid section diameter, from more than side cross-sections;

an outer side surface comprising an outer mid section diameter thereof continuing to an outer lower section diameter thereof;

said outer side surface further comprising an outer diameter thereof which, between said outer lower section diameter and an outer upper section diameter thereof substantially never increases when moving from any lower circumference thereof to any higher circumference thereof, from more than two side cross-sections;

an open top circumscribed by said inner upper section diameter;

a base circumscribed by said outer lower section diameter; and

said inner side surface, said outer side surface, said inward angle, said open top which is smaller than said inner mid section diameter, and said base circumscribed by said outer lower section diameter which is larger than said outer mid section diameter, all comprising a single, unitary article of fabrication as shown in Figures 1-5. Daenen continues to disclose that the outer side surface comprises an outer mid section diameter thereof continuing to the outer lower section diameter thereof that is larger than said outer mid section diameter, from more than two side cross sections (Figure 5) as well as the article of fabrication being a rigid material substantially similar to that of a shot glass. More specifically, the drinking vessel is a tumbler which is defined as a stemless drinking glass having a flat, thick bottom and although the use of the term glass does not apply to the material from which the tumbler is made, it is extremely well

known in the art at the time of the invention to fabricate said tumbler from a rigid material such as glass. Furthermore, it should also be noted that all "shot glasses" are not fabricated from rigid material. The use of the term "shot glass" does not provide limitations to the claim that refers to a rigid material. For example, a small drinking vessel made from a flexible plastic material in order to reduce the chances of breaking the vessel would also be defined as a "shot glass." Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Stonehouse to include a outer side surface comprising an outer mid section diameter thereof continuing to an outer lower section diameter thereof which is larger than said outer mid section diameter, from more than two side cross sections as well as an article of fabrication that is a rigid material substantially similar to that of a shot glass; as such is conventionally well known in the art of drinking vessels as exemplified by Daenen.

Regarding claim 7, the reference of Stonehouse in view of Daenen is fully capable of omitting any anti-splash element comprising an inward angle greater than or equal to 90 degrees tangentially at any point between said inner mid section diameter and said inner upper section diameter. Concerning claim 8 the reference of Stonehouse also discloses that said inward angle continuously increases at all points along said inner side surface from said inner mid section diameter to said inner upper section diameter as shown in Figure 2.

Claims 2-6 further requires that the inward angle comprises no more than approximately 15 degree angle tangential to any point from said inner mid section

diameter to said inner upper section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the angle tangential to any point from said inner mid section diameter to said inner upper section diameter to no more than 15 degrees in order to maximize the efficiency of the anti-splash, anti-spill in the apparatus. Only the expected results would be attained.

Claims 9 and 10 further requires that the inner section ratio be approximately 1 to 0.875 between said inner mid section diameter and said inner upper section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the ratio between the inner mid section diameter and the inner upper section diameter in order to maximize the efficiency of the anti-spill, anti-splash apparatus. Only the expected results would be attained.

Claims 12 and 13 further requires that the fluid holding volume is approximately 37.5 cubic centimeters. It would have been well within the purview of one of ordinary skill in the art to optimize the fluid holding volume in order to maximize the appropriate amount of fluid needed for the usage of the apparatus. Only the expected results would be attained.

Claims 14-16 further requires that the inner side surface height be approximately 3 centimeters and the inner mid section diameter by approximately 4 centimeters. It would have been well within the purview of one of ordinary skill in the art to optimize inner surface height and inner mid section diameter in order to maximize the efficiency of the anti-spill, anti-splash apparatus. Only the expected results would be attained.

Claim 21 further requires that the outward angle comprise an approximately 30 degree angle tangential to at least one point from said outer mid section diameter to said outer lower section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the angle between the outer mid section diameter and the outer lower section diameter in order to maximize the stability of the anti-spill, anti-splash fluid holding apparatus. Only the expected results would be attained.

Claims 23 and 24 further requires that the outer mid section diameter and the outer lower section diameter be at a ratio of approximately 1 to 1.33. It would have been well within the purview of one of ordinary skill in the art to optimize the ratio between the outer mid section diameter and the outer lower section diameter in order to maximize the stability of the anti-splash, anti-spill fluid holding apparatus. Only the expected results would be attained.

Concerning claim 27, Stonehouse and Daenen discloses that the inner side surface, the outer side surface, said points along said inner side surface forming said inward angle, and said base comprises a single unitary article of fabrication as described above concerning claim 1. Stonehouse and Daenen do not appear to disclose the fluid holding volume or the angle between the inner mid section diameter to the inner upper section diameter. However, it would have been well within the purview of one of ordinary skill in the art to optimize fluid holding volume and the angle between the inner mid section diameter to the inner upper section diameter in order to maximize the efficiency and the appropriate amount of fluid needed for the usage of the fluid holding apparatus. Only the expected results would be attained. Regarding claims 25

and 28, the apparatus of Stonehouse in view of Daenen is fully capable of being in a sterile state suitable for utilization in surgical procedures.

4. Claims 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stonehouse (U.S. Patent No. Des. 375,870) in view of Daenen (U.S. Patent No. Des. 248,075) as applied to claims 1 and 28 above, and further in view of the Applicant's Admitted Prior Art.

Stonehouse in view of Daenen is relied upon as set forth in reference to claims 1 and 28 above. Stonehouse in view of Daenen does not appear to disclose that the apparatus is in combination with a surgical kit. However, in the Background portion of the Applicant's Specification (most notably paragraph 3), the Applicant discloses that surgical kits often comprise not only surgical clamps, scissors, hemostats, needle holders, biopsy punches etc., but also a conventional "shot glass".... wherein the shot glass is placed on a surgical tray and filled with antiseptic solution. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the apparatus of Stonehouse in view of Daenen in combination with a surgical kit, as such is commonly known in the art as exemplified by the Applicant's Admitted Prior Art.

Response to Arguments

5. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Applicant's attention is drawn to the pertinent prior art of Tracy (U.S. Patent No. 2,122,628), McBride (U.S. Patent No. Des. 347,973) and Stonehouse (U.S. Patent No. Des. 370,632).
7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KEVIN C. JOYNER** whose telephone number is (571)272-2709. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/
Primary Examiner, Art Unit 1797

KCJ